

REMARKS/ARGUMENTS

This Amendment is submitted in response to the Office Action mailed on August 6, 2009. Claims 1, 15, 16, 28, 35, 43, and 49 have been amended for clarification. In light of the amendments and subsequent remarks, Applicants respectfully request reconsideration and allowance of the pending claims.

Applicants appreciate the telephonic interview with the Examiner on September 8, 2009 in which the current rejections were discussed. Proposed claim amendments were also discussed, which the Examiner acknowledged did not appear to be disclosed by the cited reference.

Claims 1-12, 15, 16, 18, 19, 23-32, 35, 36, 38, 39, and 43-49 are currently pending, with the remaining claims being withdrawn as a result of a restriction requirement. In the Office Action, the Examiner rejects all of the pending claims on the ground of nonstatutory obviousness-type double patenting in view of Claims 1-38 of U.S. Patent No. 7,527,644. Applicants request that this rejection be held in abeyance until the double patenting rejection is the only rejection remaining in the present application.

The Examiner believes that the claimed invention is anticipated by U.S. Patent No. 6,656,220 to Gomez et al. The Examiner relies in particular on the embodiments illustrated in FIGS. 6-10 of Gomez, which discloses a stent having circumferentially extending cylindrical rings and undulating links extending therebetween.

Independent Claim 1 is directed to a medical appliance including a scaffolding that defines a cylindrical member. For example, FIGS. 13-15 illustrate a medical appliance having a cone shape for facilitating bile flow therethrough. The cylindrical member has a distal end that is of a larger diameter than the proximal end. Independent Claims 43 and 49 are directed to methods of deploying and removing a similar medical appliance, respectively.

Applicants respectfully disagree with the rejection and submit that Gomez fails to teach or suggest a cylindrical member having a proximal end and a distal end having an internal diameter that is larger than the proximal end, as recited by independent Claims 1, 43, and 49. The Examiner generally cites to FIGS. 6-10 of Gomez, but none of the figures or the accompanying description discloses a scaffolding having a larger internal diameter at the distal end than the proximal end. Moreover, Gomez fails to teach or suggest at least the method of

Claim 49, which includes specific steps for removing the medical appliance. In particular, Claim 49 recites the steps of grasping a suture threaded through eyelets of the medical appliance and pulling on the suture to reduce the outward radial force of the medical appliance. The Examiner erroneously dismisses Claim 49 by finding that Gomez “appears to be capable of performing the method steps as recited in the claims.” However, Gomez in no way teaches or suggests removing a medical appliance in the manner recited by independent Claim 49.

Despite at least the aforementioned distinctions, Claims 1, 43, and 49 have been amended for clarification and to further distinguish Gomez. In this regard, Claims 1, 43, and 49 have been amended to recite that the scaffolding defines a substantially cone-shaped member having a proximal end and a distal end having an internal diameter larger than that of the proximal end and that the cone-shaped member is configured to facilitate the flow of bile therethrough. As discussed above, Gomez fails to teach or suggest that the proximal and distal ends are of a different size, let alone that the stent has a cone shape. Therefore, Gomez is distinguishable from independent Claims 1, 43, and 49 for at least this additional reason. In fact, the Examiner indicated in the telephone interview that amendments of this nature should distinguish Gomez.

In view of the remarks presented above, it is respectfully submitted that independent Claims 1, 43, and 49 and those claims that depend therefrom of the present application are in condition for allowance. It is respectfully requested that a Notice of Allowance be issued in due course. The Examiner is requested to contact Applicant’s undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

The patentability of the independent claims has been argued as set forth above and thus Applicants will not take this opportunity to argue the merits of the rejection with regard to the dependent claims. However, Applicants do not concede that the dependent claims are not independently patentable and reserve the right to argue the patentability of the dependent claims at a later date if necessary. For example, Applicants note that the Examiner has failed to address several dependent claims, such as Claims 3-5, 23, and 44-48. Claims 3-5 are generally directed to a coating, while Claim 23 is directed to a medical appliance having a Y-shape. Moreover, Claims 44-48 recite additional steps of independent method Claim 43, which are also not taught or suggested by Gomez. Therefore, Applicants respectfully request that the Examiner address

Appl No.: 10/674,972
Amdt. dated 09/10/2009
Reply to Office Action of August 6, 2009

each of the dependent claims so that Applicants can effectively formulate a response if necessary.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Trent A. Kirk
Registration No. 54,223

CUSTOMER NO. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Charlotte Office (704) 444-1000
Fax Charlotte Office (704) 444-1111

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON September 10, 2009.
LEGAL/02/31501732v1